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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-897

BERTHA STOSKUS, *Appellant,*

v.

CITY OF BALDWIN PARK, *et al., Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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No. _____

BERTHA STOSKUS, *Appellant,*

v.

CITY OF BALDWIN PARK, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Bertha Stoskus petitions this Court for a writ of certiorari to review the decision and judgment of the Ninth Circuit Court of Appeals entered on September 12, 1979.

OPINION BELOW

The opinion of the Ninth Circuit Court of Appeals has not been reported. A copy of said decision appears in Appendix "A" attached hereto. No opinion was rendered by the District Court for the Central District of California.

JURISDICTION

Appellant filed suit under 42 U.S.C. §1983 in the District Court on November 13, 1973, basing jurisdiction upon 28 U.S.C. §§1343(3), 1343(4), 1331 and 2201. The judgment of the Court of Appeals, Ninth Circuit, was entered on July 30, 1979, affirming the decision of the District Court dated February 28, 1977. A timely request for rehearing was denied by the Court of Appeals on September 12, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Does California provide adequate judicial review of special assessments for purposes of the Johnson Act (28 U.S.C. §1341) given the facts that:

   a. State law gives conclusive weight to the determinations and findings of assessment boards (Streets & Highways §6427);

   b. Special assessment boards are not required to receive evidence as to the approximate amount of benefits conferred upon the homeowner by reason of the construction of the municipal improvement;

   c. The burden of proof at the assessment board hearing is upon the homeowner;

   d. The decision of the assessment board need not set forth any of the facts or reasons upon which it based its determinations; and

   e. There is a high probability of psychological bias by an assessment review board which is sitting in review of its own decision to construct the improvement and impose the special assessment?

2. Did appellant have an adequate state remedy considering the defects in the administrative procedures listed above and given California's narrow scope of judicial review, which limits challenges to special assessments to instances of fraud, gross injustice, or mistake?

3. Was the imposition of a special assessment of $8,413.74 upon appellant's property, valued at $16,200 and benefitted in the sum of $550 by reason of the construction of the improvement, a taking of her property without the payment of just compensation and violative of due process of law?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment of the United States Constitution:

"(N)or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. §1341:

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

42 U.S. C. §1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

California Streets & Highways Code §5660:

"No action, suit, or proceeding to set aside, cancel, avoid, annul or correct any assessment or reassessment, or to review any of the proceedings, acts, or determinations therein, or to question the validity of, or to enjoin the issuance of bonds to represent the same, shall be maintained by any person unless such action is commenced within 30 days after the recording of the warrant, diagram and assessment or reassessment, and thereafter all persons shall be barred from any such action or any defense of invalidity of the assessment or of bonds issued thereon or of the reassessment if such is made and of bonds issued thereon."

California Streets & Highways Code §6427:

"Bonds issued pursuant to this part shall by their issuance be conclusive evidence of the regularity of all proceedings under this division leading up to such issuance."

STATEMENT OF THE CASE

Bertha Stoskus (hereinafter referred to as "appellant") is an eighty-year-old widow of modest means who has resided in Baldwin Park, California (hereinafter referred to as "City") since 1941. On October 4, 1967, the City Council met to consider the possibility of constructing a new dead-end street across her property. Despite her protests and those of several residents of the area, the City Council voted affirmatively (C.T. 512). In November of 1967, the City instituted proceedings to condemn a portion of the appellant's lot in order to build Monterey Avenue and construction was begun shortly thereafter. At the time of the construction of Monterey Avenue, Mrs. Stoskus had easy access to an existing street and her property was worth $16,250 (C.T. 347).

On or about April 18, 1968, Mrs. Stoskus received a notice that she was to be assessed the sum of $8,413.74 for the cost of constructing the street. During this period her monthly income consisted of $148 in Social Security benefits and approximately $1,700 annually from her work as a seamstress (C.T. 511). On May 8, 1968, she and eight other homeowners attended a City Council meeing to protest the assessment (C.T. 248). The City Council overruled the protests and affirmed the amount of the assessment (C.T. 511). The City's decision was based entirely upon testimony by its assessment engineer (C.T. 186-187). His testimony did not set forth the quantum of special benefits which would accrue to appellant's property by reason of the construction of the improvement. The assessment engineer simply concluded that frontage upon a new street equaled benefits (C.T. 393).

Despite the fact that the City Council had in its possession a report which indicated that the aggregate total amount of the special assessment was over 50% of the aggregate total value of all land located within the special assessment district, it overruled the protests and affirmed the amount of assessment (C.T. 290-291, 511). The decision rendered by the City Council to impose the special assessment failed to provide Mrs. Stoskus with the evidentiary reasons upon which it was based.

On June 26, 1970, the condemnation proceeding was heard in Los Angeles Superior Court (C.T. 248). Testimony presented at the condemnation trial by the City's expert witness revealed that a possible benefit to Mrs. Stoskus' land in the form of a $550 monetary enhancement resulted from construction of Monterey Avenue (C.T. 348). There was no other proof of any benefit resulting from the construction of the improvement, but the court refused to permit the amount of the assessment to be included in the condemnation award by way of severance damages.

The ruling of the trial court on that point was reversed by an intermediate court of appeal, but on appeal to the California Supreme Court it was held that the amount of the special assessment could not enter into the calculation of severance damages. *(City of Baldwin Park v. Stoskus,* [1972] 8 Cal. 3d 563, 105 Cal. Rptr. 326.) Mrs. Stoskus failed to pay the assessment and on April 4, 1972, her home of 31 years was offered for sale by the City. In order to redeem her home she was forced to pay the sum of $12,998.38 to the City in March, 1973 (C.T. 511).

REASONS FOR GRANTING THE WRIT:

A. California Fails to Provide Adequate Judicial Procedures For Challenging Unjust Special Assessments.

A special assessment which is in substantial excess over the amount of any benefits bestowed is a taking of property without payment of just compensation and violative of due process. *Village of Norwood v. Baker* (1898) 172

U.S. 269; *Martin v. Dist. of Columbia* (1907) 205 U.S. 135. In California, however, this basic federal constitutional right is virtually impossible to enforce. The California Supreme Court has admitted that the scope of judicial review over special assessment districts is "quite narrow". *Dawson vs. Los Altos Hills* (1976) 16 Cal. 3d 676, 684 129 Cal. Rptr. 97.

In the absence of fraud, the determinations of the assessing officers as to the amount of special benefit received by the property assessed are conclusive and not collaterally assailable in the courts. *Los Angeles G. & E. Co. v. County of Los Angeles* (1912) 162 Cal. 164, 164-167, 121 P. 384; *Larsen v. San Francisco* (1920) 182 Cal. 1, 8-9, 14-16, 186 P. 757; *Duncan v. Ramish* (1904) 142 Cal. 686, 76 P. 661. As the last-cited case stated:

> "It is true that local assessments are said to be imposed on the theory that the property adjacent to the improvement receives special benefit therefrom. But this is a matter which is for the determination of the legislative authority of the state, acting through its established agencies for the government of political subdivisions, or directly by the Legislature of the state, as that body may see fit. It enough for the local property owner that he has a right to be heard before the city council upon the question, by filing a petition of remonstrance in the proceeding prescribed by law, setting forth his reasons why the improvement should not be made. Upon this the council must decide the question, and its decision is final." (142 Cal. 637)

The fact that an assessment is grossly excessive does not itself make the assessment invalid. *Pacific Coast S.S. Co. v. Richardson* (1921) 186 Cal. 70, 71, 198 P. 1034. Nor is a special assessment void for failure to prescribe the precise mode of determining the extent of benefits. *Greenwood v. Morrison* (1882) 128 Cal. 350, 60 P. 971; *Larsen v. San*

Franciscio, supra, 182 Cal. 8-9, 14-16.1/

B. California Fails to Provide Adequate Administrative Procedures For Challenging Unjust Special Assessments.

California's scope of judicial review is further delimited to a scope narrower than is required by the fourteenth amendment as a result of inadequate procedural rights at the administrative level. See *Mathews v. Eldridge* (1976) 424 U.S. 319; *Goldberg v. Kelly* (1970) 397 U.S. 254; Friendly, *Some Kind of Hearing* (1975) 123 U. Pa. L. Rev. 1261, 1281-1295. The defects of the California administrative review procedures include the following:

1. State law does not require the City's appraiser to state any facts which would support the basis of his conclusion that the special assessment did not exceed the amount of benefits conferred *(Greenwood v. Morrison, supra.)*

2. The burden of proof at the assessment board hearing rests on the person objecting to the special assessment *(Blake v. City of Eureka* [1927] 201 Cal. 643, 258 P. 945).

3. The decision rendered by the administrative body need not set forth any of the facts or reasons upon which it based its decision to impose the special assessment *(Larsen v. San Francisco, supra).*

4. There is a high probability of bias by a reviewing board due to the fact that the board:

   a. Is sitting in review of its own decisions to impose the special assessment *(Withrow v. Larkin* [1975] 421 U.S. 35, 54);

1/ The repeated refusal of California courts to invalidate special assessments in face of constitutional challenges is documented in a law review article entitled, *How Not To Challenge Special Assessments In California or You Can't Beat City Hall* (1965) 77 Stan. L. Rev. 247.

b. Is likely to refrain from granting relief to individuals which would result in an increase in taxes upon other taxpayers residing within the jurisdiction or would increase the amount of taxes paid by other property owners with the special assessment district; and

c. Has already approved the construction of the improvement and the award of contracts.

The present case illustrates the hollowness of the protections offered to those seeking to challenge excessive special assessments. The very fact that the City Council permitted a special assessment ($8,740) which was 16 times greater than the amount of any benefits ($550) which appellant received serves as a prime example of the arbitrary and unconstitutional nature of the procedures which presently thrive in California.

None of the respondents' public records, deliberations or findings concerning the construction of Monterey Avenue discuss, establish or even estimate the monetary value of any supposed benefits to the assessed properties resulting from the improvement.

The records show unequivocally that the respondents made no attempt to ascertain whether the appellant received any actual benefit as a result of the public improvement. The City's decision to impose the special assessment was based solely upon the opinion of Lawrence Bevington, the City's assessment engineer (C.T. 186-187). Mr. Bevington's opinion is set forth in the minutes of the City Council meeting held on May 6, 1968, at page 2:

> "City Attorney Flandrick asked Mr. Bevington if the assessments were spread in proportion to his estimate and opinion of benefits to such properties. Mr. Bevington stated that they were. City Attorney Flandrick asked Mr. Bevington to describe his basic formula for spreading the

> cost of the district. Mr. Bevington stated that the basic formula was one of benefit to the property involved in the district; that all of the properties in the district received frontage on the new street; that this adds additional value to the property; that there was better access even to the properties that were already developed; that the street was a normal residential street; that the street was a safe street for traveling; that there was the ability on the undeveloped plots to proceed with development and construction on a completed street." (C.T. 393.)

The minutes speak for themselves. There was no true calculation of any special benefit to appellant's land. The information upon which the City Council of Baldwin Park admittedly relied is equivalent to no information, devoid of any concrete calculations, financial figures, or statistics upon which to base a rational decision. (Compare: *Kansas City So. Ry. v. Road Improvement District* [1921] 256 U.S. 658, 660-661.) At best, it amounts to the conclusion that frontage adds up to benefits with no consideration of the pecuniary value of those benefits.

State law allows municipal officials to preside over the review of special assessments (Streets & Highways Code §§6005, 5220, 5221). However, municipal oficials sitting in assessment review could easily have the temptation to be influenced by political expediency rather than by equitable or legal considerations. They are likely to be preoccupied with the costs of government and may be predisposed to a certain reluctance to reduce individual assessments for fear of reducing revenues they have to spend. (See *Concerned Citizens v. Pine Creek* [1977] 429 U.S. 651.) In many cases, it would be contrary to their interest to grant administrative relief to challenges to special assessments. The granting of relief would result in increased taxes of other citizens in order to provide adequate funding with which to pay for the municipal

improvement. (See Berry, *A Federal Forum for Broad Constitutional Deprivation by Property Tax Assessments* [1977] 65 Cal. L. Rev. 828, 846.)

The potential for bias clearly existed when the Baldwin Park City Council sat in review of the Monterey Avenue Special Assessment District. The construction of Monterey Avenue was envisioned by city planners as far back as 1961 as being necessary to comply with the General Plan for the development of Baldwin Park. 2/ Moreover, in a letter to Mrs. Stoskus, dated July 12, 1967, the city engineer stated that the special assessment "district's sole purpose is to comply with the General Plan of the City." (C.T 286) Upgrading a community costs money and property owners within a community are reluctant to part from money in the form of increased taxes. The City Council was obviously aware that the residents of Baldwin Park were already overburdened by excessively high taxes. See *Serrano v. Priest* (1972) 5 Cal. 3rd 584, 96 Cal. Rptr. 60; *Regus v. Baldwin Park* (1977) 70 Cal. App. 3d 968, 979, 139 Cal. Rptr. 196. In order to circumvent this sensitive issue the respondents chose to subject a handful of property owners to finance development, and thus comply with the General Plan, without exposing themselves to the political danger of voting for increased taxes to finance improvements which are of public, as distinguished from special, benefit.

C. The Decision Below Raises Significant and Recurring Problems Concerning Unjust Special Assessments

Inequitable assessments do not occur only in Baldwin Park. The problem is occurring throughout this Nation.

2/ The General Plan made note of the fact that due to the shape of the typical lot in Baldwin Park, only the front portion could be utilized for residential purposes. As a result, nearly 1,000 of the City's 3,952 acres lay underdeveloped (C.T. 415). It recommended that streets be constructed through the landlocked rear portions of these lots thereby creating "backyard subdivisions" (C.T. 476).

The Senate Subcommittee on Intergovernmental Relations has recently found that "Far too long, the average taxpayer in most states has been at the mercy of inexpert local officials, arbitrary bureaucracies, and privileged interests. Antiquated administrative practices and insufficient commitment of resources have prevented even responsible officals from protecting the public interests" (Status of Property Tax Administration in the United States, 125 [Comm. Print 1973]). It is not surprising that "taxpayers' revolts," such as that which occurred in California with the adoption of Proposition 13 in 1978, clearly represent a conviction of homeowners that big government is taxing them out of their homes. 3/

Special assessments work a particular hardship upon the elderly and poor, who are least able to afford sudden and unexpected increases in their property taxes. Since a much smaller group than the entire city population is usually involved in a special assessment district, not all property owners affected thereby are necessarily familiar the the method of assessment. Frequently, they fail for want of sufficient assets or due to a lack of understanding, or notice, to pay the tax. The property is then placed in foreclosure and often purchased at an unconscionably low price by speculators. (See *Kessler v. Adkins* [1979] 98 Cal. App. 3d _____, 159 Cal. Rptr. 231.) 4/

The whole body of California laws pertaining to special assessments is complex, technical, and full of pitfalls all designed to confuse and prejudice the home owner who seeks to challenge the assessment. The California Supreme

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3/ It is interesting to note that special assessments are not affected by Proposition 13. *(Malmstrom v. County of Fresno* [1979] 94 Cal. App. 3d 974, 156 Cal. Rptr. 777.)

4/ For example, in *Kessler*, the speculator purchased the defendant's property at a tax sale for $168.40.

Court has recognized that the cluster of acts governing special assessments is "bewildering". *Dawson v. Los Altos Hills, supra,* 16 Cal. 3d at 686. Perhaps the most depressing, yet persuasive, proof is that the bar of this state has virtually given up on trying to help aggrieved owners. The declining number of reported decisions among the annotations to the 1911 Municipal Improvement Act attests eloquently to that fact. The reason is that the law is so stacked against the homeowners, and precedents favorable to the homeowner so few, that conscientious lawyers are hard put to advise clients to spend money on what is likely to be futile gesture, no matter how unreasonable and overreaching the conduct of the assessing entity. (See *How Not To Contest Special Assessments In California, or You Can't Beat City Hall, supra,* 77 Stan. L. Rev. 255-256.)

CONCLUSION

For the foregoing reasons it is submitted that the 1911 Municipal Improvement Act is an outmoded and highly prejudicial means of creating special assessment districts. The state relief thereunder is wholly inadequate for the purposes of the Johnson act *(Tully v. Griffin* [1976] 429 U.S. 68, 73). The appellant should be permitted to pursue her claim that the special assessment against her property was in substantial excess over any benefits bestowed and amounted to an unconstitutional taking of property. *Village of Norwood v. Baker, supra; Martin v. Dist. of Columbia, supra.* A writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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APPENDIX

Opinion and Judgment of Court of Appeals

United States Court of Appeals For the Ninth Circuit

BERTHA STOSKUS, *Plaintiff-Appellant,*
v.
CITY OF BALDWIN PARK, *et al* *Defendants-Appellees.*

No. 77-2406
MEMORANDUM

Appeal from the United States District Court for the Central District of California

Before: WRIGHT and TRASK, Circuit Judges and CALISTER,* District Judge

In the present federal action, plaintiff-appellant Bertha Stoskus challenges, under 42 U.S.C. § 1983, the constitutionality of a special assessment levied upon her property by the City of Baldwin Park after failing to object to the assessment under the procedures provided to her by California law. We agree with the district court and hold that she cannot now challenge the assessment.

When a sprcial assessment is not levied in proportion to the benefits bestowed on the property assessed, it amounts to an unconstitutional taking of property and may be attacked on that ground. *Norwood v. Baker,* 172 U.S. 269 (1898); *City of San Diego v. Atchison, Topeka & Santa Fe Ry. Co.,*45 F. 2d 11 (9th Cir. 1930); *see also Owatonna v. Chicago, Rock Island Pacific R.R. Co.,* 450 F. 2d 87 (8th Cir. 1971); *Spring Street Co. v. City of Los Angeles,* 170 Cal. 24, 148 Pac. 217

*Honorable Marion J. Callister, United States District Judge, for the District of Idaho, sitting by designation.

(1915). In the present case, appellant had a remedy with which to challenge the assessment. Under California Streets and Highways Code § 56660, appellant had 30 days from confirmation of the assessment to file suit "to set aside, cancel, avoid, annul or correct" the assessment. She did not do so.

There is no doubt that the 30-day limitation is reasonable. As the California Supreme Court pointed out in appellant's collateral challenge in state court, the 30-day limitation exists so as to achieve finality in determining the amount that each landowner must contribute to the assessed improvement. "[W]ere we to accept [Stoskus'] proposal [to permit a collateral attack upon the amount of the assessment], we might severely reduce the value of the special assessment device as a means of financing public improvements." *City of Baldwin Park v. Stoskus,* 8 Cal. 3d 563, 571, 105 Cal. Rptr. 325, 330, 503 P. 2d 1333, 1338 (1972).

For the same reasons, appellant is denied here the right to attack the assessment collaterally under a federal cause of action using 42 U.S.C. § 1983. The State of California provided appellant with an adequate and fair remedy to challenge the assessment. In a suit to challenge the assessment, appellant could have brought forth her constitutional argument that the assessment amounted to a taking without due process of law. *See e.g., Cogan v. City of Los Angeles,* 34 Cal. App. 3d 516, 520, 110 Cal. Rptr. 100, 102 (1973). Failure to bring such suit bars her from raising the claim not only in a collateral state proceeding but also in the present federal action.

There is an additional reason why appellant is precluded from bringing the instant action in federal court. The district court found that its jurisdiction is barred by 28 U.S.C. § 1341. That statute reads:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

The establishment of a special assessment district and the levying of an assessment against the benefited property is considered to be an exercise of the state's taxing power,

Adaman Mutual Water Company v. United States, 278 F. 2d 842, 849-50, n. 10 (9th Cir. 1960); *see also Dawson v. Town of Los Altos Hills,* 16 Cal. 3d 676, 683, 129 Cal. Rptr. 97, 101, 547 P. 2d 1377, 1381 (1976), and therefore comes within the section 1341 prohibition. Appellant advances two reasons why her suit should not be barred by section 1341. First, she argues that the state has not provided her with adequate means to challenge the assessment on constitutional grounds. Second, she argues that her suit seeks only to collect money damages resulting from the assessment and not to "enjoin, suspend or restrain" the collection of the assessment.

Appellant's arguments must be rejected. First, as previously discussed, appellant does have an adequate remedy with which to challenge the assessment. In a state suit, appellant could have advanced the same constitutional arguments she now raises in federal court. Her failure to bring the state action within the 30-day period prescribed by the state statute does not remove the bar. *Henry v. Metropolitan Dade County,* 329 F. 2d 780, 781 (5th Cir. 1964). As the *Henry* court pointed out, to hold otherwise would allow any disgruntled claimant to simply wait until the expiration of the state limitations period and then file suit in federal court.

Appellant's second argument, that her suit is outside the section 1341 prohibition because it does not seek injunctive relief, is also incorrect. Appellant's suit asks for a refund of the assessment, which she was forced to pay through the forced foreclosure of her home. Section 1983 suits for a state tax refund are considered to be barred by the 28 U.S.C. § 1341 jurisdictional prohibition. *Kelly v. Springer,* 527 F 2d 1090, 1093-94 (9th Cir. 1975). The present federal suit, seeking a refund of the assessment, is therefore barred under 28 U.S.C. § 1341.

AFFIRMED.

United States Court of Appeals
For the Ninth Circuit

BERTHA STOSKUS,	)	
Plaintiff-Appellant,	)	
vs.	)	No. 77-2406
CITY OF BALDWIN PARK, et al	)	**ORDER**
Defendants-Appellees.	)	

Before: WRIGHT AND TRASK, Circuit Judges, and CALLISTER,* District Judge

The panel as constituted in the above case has voted to deny the petition for rehearing.

The petition for rehearing is denied.

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*Honorable Marion J. Callister, United States District Judge, for the District of Idaho, sitting by designation.